

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 10

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PERETZ ROSENBERG

Appeal No. 97-0690
Application No. 08/375,094¹

ON BRIEF

Before MEISTER, FRANKFORT, and NASE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

According to appellant's Notice of Appeal (Paper No. 7, filed May 16, 1996), this appeal is from the examiner's final rejection of claims 1 through 20. We note, however, that in

¹ Application for patent filed January 19, 1995. According to appellant, this application is a continuation-in-part of application 08/138,285, filed October 20, 1993, now U.S. Patent No. 5,390,850, issued February 21, 1995.

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the final rejection (Paper No. 4, mailed February 16, 1996)
the

examiner only rejected claims 1 through 10 and 15 through 20 under 35 U.S.C. § 112, second paragraph, as being indefinite, and claims 1, 9 and 11 under 35 U.S.C. § 102(b) as being anticipated by Lockwood. Claims 12 through 14, the only other claims pending in the application, were not rejected by the examiner, but were objected to and indicated to be allowable if rewritten in independent form. Thus, only claims 1 through 11 and 15 through 20 are properly before us on appeal, with the appeal as to claims 12 through 14 being dismissed.

Appellant's invention relates to a pulsating spraying device. Claim 1 is representative of the subject matter on appeal and a copy of that claim, as it appears in the Appendix to appellant's brief, is attached to this decision.

The sole prior art reference of record relied upon by the examiner is:

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Lockwood 3,348,520

Oct. 24, 1967

Claims 1 through 10 and 15 through 20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to

particularly point out and distinctly claim that which appellant regard as his invention.

Claims 1, 9 and 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lockwood.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the examiner's answer (Paper No. 9, mailed August 22, 1996) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 8, filed July 15, 1996) for appellant's arguments thereagainst.

OPINION

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In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

We turn first to the examiner's rejection of appealed claims

1 through 10 and 15 through 20 under 35 U.S.C. § 112, second paragraph. After reviewing appellant's specification and claims, and appellant's arguments on pages 6-8 of the brief, it is our opinion that the scope and content of the subject matter embraced

by appellant's independent claims 1 and 15 on appeal are reasonably clear and fulfill the requirement of 35 U.S.C. § 112, second paragraph, that they provide those who would endeavor, in future enterprise, to approach the area circumscribed by the claims, with the adequate notice demanded by due process of law,

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so that they may more readily and accurately determine the boundaries of protection involved and evaluate the possibility of infringement and dominance. See, In re Hammack, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970). Like appellant, we view the examiner's criticism of the language in the last clause of claim 1 and the penultimate clause of claim 15, in reality, to be an issue of claim breadth and not an issue of indefiniteness of the claim language. Thus, contrary to the examiner's position, we find that independent claims 1 and 15 on appeal do particularly point out and distinctly claim that which appellant regards as his invention and are definite within the meaning of the Statute. Accordingly, we will not sustain the examiner's rejection of appellant's claims 1

through 10 and 15 through 20 under 35 U.S.C. § 112, second paragraph.

We next look to the examiner's rejection of claims 1, 9 and 11 under 35 U.S.C. § 102(b) as being anticipated by Lockwood.

Like the examiner, we broadly view the applicator of Lockwood as a pulsating spraying device for applying a liquid material (e.g., hot melt adhesive) to a work surface (19). See particularly, column 1, lines 25-34, of Lockwood. The device of Lockwood includes a housing (10) having an inlet (16) for a liquid material under pressure, and a plurality of discharge openings (28) for discharging the liquid material; an inlet chamber (12) which communicates with the housing inlet; a plurality of pulsating control chambers (23), each having an inlet passageway and an outlet passageway as set forth in appellant's claim 1; and a plurality of "oscillating" members (e.g., 32, 32a), one located in each of the pulsating control chambers, "rapidly oscillated by the flow of liquid into the respective pulsating control chamber via its inlet passageway, to drive the liquid via its outlet passageway out of the respective discharge opening in the form of pulses," as set forth in appellant's claim 1 on appeal.

In contrast to appellant's position on pages 9 and 10 of the brief, we view the language of claim 1 on appeal regarding "oscillating members," which are rapidly oscillated by the flow of liquid material, as being readable on and encompassing the valve head members (32, 32a) of Lockwood when the device of

Lockwood is used to apply short dots of liquid material on the moving work surface (19) "at high cycling rate" (Lockwood, col. 1, lines 40-44). In this regard, we consider that the terms "oscillating" and "oscillated" in appellant's claim 1 are broad enough to encompass the type of back and forth motion experienced by the valve head members (32, 32a) of Lockwood when they are reciprocated at high cycling rates. Webster's New World Dictionary (Prentice Hall Press, 1986) defines "oscillate" as "1. to swing or move regularly back and forth" and defines "reciprocate" as "2. to move alternately back and forth." Since both of these terms appear to mean the same thing, we view them as being interchangeable in the present fact situation. Thus, when the applicator of Lockwood is operated to apply short dots of liquid material, it is broadly a pulsating spraying device having a plurality

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of pulsating control chambers, with an
oscillating/reciprocating member in each of said chambers
which

is rapidly oscillated by the flow of liquid into the
respective pulsating control chambers to drive the liquid out
of the device in the form of pulses, as generally required in
appellant's claim 1 on appeal. Accordingly, in view of this
understanding of the operation of the device in Lockwood, we
find appellant's
arguments as set forth in the brief to be unpersuasive and we
will therefore sustain the examiner's rejection of claim 1
under 35 U.S.C. § 102(b).

As for the examiner's rejection of claims 9 and 11 under
35 U.S.C. § 102(b), we note that page 5 of appellant's brief
indicates that "claims 1, 9 and 11 are grouped together."
Thus, we conclude that claims 9 and 11 on appeal fall with
claim 1.

To summarize our decision, we note that the examiner's
rejection of claims 1 through 10 and 15 through 20 under 35

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U.S.C. § 112, second paragraph, has not been sustained; but that the examiner's rejection of appealed claims 1, 9 and 11 under 35 U.S.C. § 102(b) relying on Lockwood has been sustained.

The decision of the examiner is, accordingly, affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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Administrative Patent Judge)	
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Administrative Patent Judge)	AND
)	INTERFERENCES
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